

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 665 OF 2007

M/s. Milestone Developers.... Petitioner

versus

The Mun.Corpn.of Gr.Bombay & ors.... Respondent.

Shri G.V.Moothy i/b. Mamta Shah for the petitioner
Shri A.A.Bhor i/b r.A.Malandkar & S.H.Ujiniwala for
respondents.

CORAM; A.P. DESHPANDE, J.
DATED; 6TH JULY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. This petition is directed against the order dated 15-11-2006 passed by the Small Cause Court, Bombay in a Municipal Appeal St. No.1545 of 2003. By the impugned order, the application moved by the petitioner for restoration of the appeal has been dismissed.

3. The present petitioner is a builder. The petitioner filed an appeal on 14-8-2003 challenging the rateable value fixed by the respondent at Rs. 2,53,500/- with effect from 1-4-2002. At the time when the appeal was filed the petitioner has engaged

advocate Shri S.B.Rathore. However. for the reasons best known to the petitioner, the petitioner obtained no objection certificate from the said advocate and engaged M/s. S.K.Legal Associates to prosecute the appeal sometime in the month of April 2005. It is the case of the petitioner that while handing over the vakalatnama to M/s. S.K.Legal Associates, the appeal stamp number was wrongly written as 1415/03 instead of 1545/03. On account of the said mistake the vakalatnama could not be filed in the proper case. When enquiries were made, the appellant was informed that there is no matter of the appellant at appeal St. No. 1415/03 filed in the name of the appellant. It is the case of the petitioner that the petitioner was not aware about the appeal being dismissed in default on 7-4-2005, which fact came to the knowledge of the petitioner on 28-8-2006 while going through the daily board.

5. The respondent Corporation opposed the application on the facts so also on an additional ground to the effect that the petitioner had failed to pay the taxes till the date of filing of the appeal as is required by section 217(2)(d) of the MMC Act. The trial court has accepted the objections raised by the respondent and declined to restore the appeal on both the grounds i.e.(1) the petitioner not being vigilant in

prosecuting the appeal and (2) that the petitioner was in arrears of taxes and had not complied with the requirement of section 217(2)(d).

6. So far as section 217(2)(d) is concerned, according to the petitioner, the petitioner has paid the entire money due and payable to the respondent. However, according to the respondent till the date of filing of the appeal, the petitioner was in arrears of Rs. 2,19,618/-. According to the learned counsel for the petitioner, the entire amount has been paid. I do not propose to go into the said question for the purpose of this writ petition. I accept the assessment as made by the respondent Corporation which is placed on record of the petition as Exh.I on page 87. The learned counsel for the petitioner undertakes on behalf of the petitioner to deposit the said sum of Rs. 2,19,618/- with the respondent Corporation within a period of four weeks from today,. In so far as the reasons assigned for remaining absent when the appeal was fixed before the court, when it came to be dismissed in default, the petitioner has put forth sufficient cause to condone the said lapse. In the facts of the case wrong mention of the appeal stamp number, is a justified cause for the appeal to be restored. As I have accepted the reason put forth by the petitioner to be sufficient, hence the appeal

dismissed by the trial court deserves to be restored to file subject to the petitioner complying with the requirement of section 217(2)(a) within a period of four weeks from today.

7. The writ petition is thus partly allowed. The impugned order passed by the Additional Chief Judge, Small Cause Court dated 15-11-2006 is quashed and set aside. The appeal shall stand restored to file subject to the condition that the petitioner deposits a sum of Rs. 2,19,618/- with the respondent within a period of four weeks from today. It shall be open for the petitioner to file an appropriate application before the trial court and substantiate his claim that the taxes are already paid. If such an application is moved by the petitioner, the trial court shall decide the quantum of amount payable by the petitioner. In the event if the trial court records a finding that the petitioner had already paid the taxes as required by section 217(2)(a) of MMC Act, the petitioner will be entitled to refund of the amount. Rule made absolute in above terms.

...